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Televising Supreme Court and Other Federal Court Proceedings: Legislation and Issues

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Televising Supreme Court and Other Federal Court Proceedings: Legislation and Issues

Summary

Over the years, some in Congress, the public, and the media have expressed interest in television or other electronic media coverage of Supreme Court and other federal court proceedings. The Supreme Court has never allowed live electronic media coverage of its proceedings, but the Court posts opinions and transcripts of oral arguments on its website. The public has access to audiotapes of the oral arguments and opinions that the Court gives to the National Archives and Records Administration. Currently, Rule 53 of the Federal Rules of Criminal Procedure prohibits the photographing or broadcasting of judicial proceedings in criminal cases in federal courts. The Judicial Conference of the United States prohibits the televising, recording, and broadcasting of district trial (civil and criminal) court proceedings. Under conference policy, each court of appeals may permit television and other electronic media coverage of its proceedings. Only two of the 13 courts of appeals, the Second and Ninth Circuit Courts of Appeals, have chosen to do so. Although legislation to allow camera coverage of the Supreme Court and other federal court proceedings has been introduced in the current and previous Congresses, none has been enacted.

In the 109th Congress, four bills have been introduced — H.R. 2422, H.R. 4380, S. 829, and S. 1768 — to allow television or other electronic media coverage of federal court proceedings. Another bill, relating to court security — H.R. 1751 — was introduced without such a provision, but was later amended in committee to include electronic media coverage. Three of these bills, H.R. 1751, H.R. 2422, and S. 829, would grant *discretionary* authority to presiding judges to permit photographing, electronic recording, broadcasting, or televising of district and appellate court proceedings, including Supreme Court proceedings. Two other bills, S. 1768 and H.R. 4380, would *require* the televising of all open sessions of the Supreme Court only. The five bills are similar, or identical, to legislation introduced in previous Congresses since at least the 105th Congress.

This report also discusses the arguments that have been presented by proponents and opponents of electronic media coverage of federal court proceedings, including the possible effect on judicial proceedings, separation of powers concerns, the purported educational value of such coverage, and possible security and privacy concerns. Finally, the report discuses the various options Congress may address as it considers legislation, including which courts should be covered, whether media coverage should be authorized or required, possible security and privacy safeguards, and the type of media coverage that would be permitted. The report will be updated upon passage of legislation, or as events warrant.

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Introduction

Over the years, some in Congress, the public, and the media have expressed interest in televising Supreme Court and other federal court proceedings. The issue has generated controversy, with strong convictions expressed for and against. For example, in 1996, Supreme Court Justice David H. Souter said, "The day you see a camera come into our courtroom, it's going to roll over my dead body."[1] In contrast, in 2005, Senator Arlen Specter remarked when introducing legislation to require televising Supreme Court proceedings that, "Today, I believe the time has come and that this legislation is crucial to the public's awareness of Supreme Court proceedings and their impact on the daily lives of all Americans."[2]

Public opinion surveys indicate increased support for television coverage of Supreme Court proceedings in recent years. A national telephone survey of 900 registered voters, conducted from April 4-5, 2006, asked, "Do you think it is a good idea or a bad idea to allow television coverage of sessions of the U.S. (United States) Supreme Court?" In response, 70% said "good idea"; 18% said "bad idea"; and 11% "don't know."[3] Over five years earlier, from December 5-17, 2000, a similar Gallup telephone poll surveyed l,011 adults nationwide. They were asked, "Do you think that the U.S. (United States) Supreme Court should or should not allow television cameras into their courtroom when they hear arguments in their cases?" In response, 50% said "should"; 48% said "should not"; and 2% had "no opinion."[4]

Increased support for televising Supreme Court proceedings may be attributed to several factors, including greater interest in and expectation of transparency in our representative form of government, controversy over some Court rulings, and anticipation of future constitutional questions that may be decided by the Court. In

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[1] See [http://www.pbs.org/newshour/bb/law/supreme_court/judge_souter.html], on the Public Broadcasting Service website.

[2] Sen. Arlen Specter, "S. 1768. A bill to permit the televising of Supreme Court proceedings," remarks in the Senate, *Congressional Record*, daily edition, vol. 151 (Sept. 26, 2005), p. S10427.

[3] FOX News/Opinion Dynamics (source: Roper Center at University of Connecticut).

[4] The Gallup Organization, survey sponsor was Cable News Network, *USA Today* (source: Roper Center at University of Connecticut).

addition, some advocates of electronic media coverage of federal court proceedings have said that advanced technology can give Americans a virtual front row seat in a courtroom, via television and other electronic formats such as the Internet. They contend that, in a technical sense, opening the courtrooms to the public by electronic means is now perhaps more feasible (e.g., through the use of small, and unobtrusive cameras).[5] Opponents of such coverage, however, are concerned that it could have a detrimental effect on court proceedings and could raise security and privacy concerns.[6]

This report begins by discussing the current rules and policies that govern the electronic media coverage of federal court proceedings, including the Supreme Court, and compares legislation in the 109th Congress. It will then address the views of proponents and opponents on myriad issues in the electronic media coverage debate — democratic values of government transparency, separation of powers, due process, integrity of court proceedings, security, and civic education — and will highlight positions that some Members of Congress, the media, the Supreme Court Justices, and other judges have taken, as proponents or opponents. Finally, the report will present concluding observations and possible options for consideration.

Current Policies on Televising Court Proceedings

Supreme Court

The Supreme Court has never permitted cameras in its courtroom to cover its proceedings. However, opinions and transcripts of oral arguments are posted on the Supreme Court's website, and audiotapes of oral arguments and opinions are available to the public.[7] Over the years, some Members of Congress and the media, including C-SPAN, have asked the Court to open its proceedings to television, but it has declined the requests.

At his September 2005 confirmation hearings to be Chief Justice of the Supreme Court, John G. Roberts, Jr., said he did not have a "settled view" on the

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[5] U.S. Congress, Senate Committee on the Judiciary, *Cameras in the Courtroom*, hearing on S. 829 and S. 1768, 109th Cong., 1st sess., Nov. 9, 2005, S.Hrg. 109-331 (Washington: GPO, 2006), pp. 7, 15, 29, and 31. Hereafter, this document will be cited as Nov. 9, 2005, Senate hearing.

[6] Ibid., pp. 9, 15, and 20.

[7] Oral argument transcripts (from Oct. 2, 2000) have been posted on the Court's website [http://www.supremecourtus.gov/oral_arguments/argument_transcripts.html] within 10-15 business days after the argument session. Beginning with the Oct. 2006 Court term, the Court will post on its website transcripts of oral arguments on the same day an argument is heard by the Court. Opinions are also posted on the Court's website. Audiotapes of oral arguments become available to the public in Nov. or Dec. following the end of a Court term. Audiotapes of oral arguments and opinions are available at the National Archives and Records Administration, and C-SPAN has been airing radio broadcasts of old oral arguments for several years. In a few cases, the Court has released audiotapes the same day as the oral arguments occurred (e.g., *Bush v. Gore* in 2000).

subject of televising Supreme Court proceedings, and would benefit from the views of his colleagues. On July 13, 2006, Chief Justice Roberts, appearing at the 2006 Ninth Circuit Court of Appeals' Judicial Conference, was asked which he thought the public would see first — the televising of a federal civil jury trial or a Supreme Court proceeding. The Chief Justice replied as follows:

> That's a tough question. In either case, there's a concern about the impact of television on the functioning of the institution, both the civil trial and the Supreme Court argument....All of the Justices view themselves as trustees of an extremely valuable institution, one that we think by and large functions pretty well. The oral argument is a valuable and important part of that, and we're going to be very careful before we do anything that will have an adverse impact on that, and I think that same perspective applies to the civil trials. I appreciate very much the argument that the public would benefit greatly from seeing how we do things.

He also said that the expedited release of audio recordings of oral arguments in a number of cases this year has had a generally positive effect because "people are learning a little about how the Supreme Court functions." However, the Chief Justice also expressed some reservations:

> We don't have oral arguments to show people, the public, how we function. We have them to learn about a particular case in a particular way that we think is important, so that's certainly something that we have to look at very carefully, in the same token that I think the Judicial Conference has to look at very carefully when it comes to civil trials as well.[8]

District Courts and Courts of Appeals[9]

Television and other electronic media coverage of federal district (trial) court proceedings is prohibited in criminal cases under current federal rules, and for civil and criminal proceedings under the policy of the Judicial Conference of the United States. Since 1946, Federal Rule of Criminal Procedure 53 has prohibited the district courts from allowing the taking of photographs in the courtroom during these judicial proceedings, or the broadcasting of the proceedings from the courtroom.[10]

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[8] Based on audio file provided by the Ninth Circuit Court of Appeals. See also David Kravets, "Chief Justice Says No to Televising Supreme Court," *Associated Press*, July 17, 2006, available at [http://www.law.com/jsp/article.jsp?id=1152867928601].

[9] There are 94 judicial districts organized into 12 regional circuits. Each circuit has a U.S. court of appeals which hears appeals from the district courts located within its circuit, and also appeals from decisions of federal administrative agencies. There is also a Court of Appeals for the Federal Circuit with nationwide jurisdiction, which hears appeals in specialized cases (e.g., cases such as those involving patent laws decided by the Court of International Trade and the Court of Federal Claims).

[10] See [http://judiciary.house.gov/media/pdfs/printers/109th/crim2005.pdf] for the text of Federal Rule of Criminal Procedure 53. The Supreme Court promulgated and amended the *Federal Rules of Criminal Procedure* pursuant to law, and the rules also have been amended by acts of Congress.

In September 1994, the Judicial Conference considered a recommendation by its Court Administration and Case Management Committee[11] to authorize the photographing, recording, and broadcasting of civil proceedings in federal trial and appellate courts. The committee presented the conference with the Federal Judicial Center's (FJC)[12] evaluation of a three-year pilot program,[13] which tested the efficacy of electronic media coverage of civil proceedings in six district and two appellate courts.[14] Criminal trial proceedings were not covered as part of the pilot. That FJC study recommended that federal courts of appeals and district courts nationwide be authorized to allow camera access to civil proceedings. However, on the basis of the data presented, the conference concluded that the intimidating effect of cameras on some witnesses and jurors was cause for concern, and declined to approve the recommendation to allow cameras in civil proceedings.

Under Judicial Conference policy adopted by resolution on March 12, 1996, each court of appeals was authorized to decide for itself whether to allow the photographing, and radio and television coverage, of appellate arguments, subject to any restrictions in statutes, national and local rules, and guidelines the conference might adopt.[15] The judicial council[16] of each circuit makes the determination for the court as a whole. To date, only the Second and the Ninth Circuit Courts of Appeals have chosen to allow cameras into their courtrooms, with each having established guidelines for its respective circuit. The Second Circuit allows camera coverage of

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[11] This committee, one of the conference's many committees, studies and makes recommendations on matters affecting case management; the operation of appellate, district and bankruptcy clerks' offices; jury administration; and other court operational matters for the U.S. courts.

[12] FJC is the education and research agency for the federal courts, created by Congress in 1967 to improve judicial administration of the U.S. Courts. For more information about FJC, see [http://www.fjc.gov].

[13] Mary Treadway Johnson and Carol Krafka, "*Electronic Media Coverage of Federal Civil Proceedings, An Evaluation of the Pilot Program in Six District Courts and Two Courts of Appeals*," Federal Judicial Center, 1994. The 1994 report on the pilot covered the period July 1, 1991, through June 30, 1993. (The period was less than three years to allow time to perform an evaluation and report to the conference before the end of the program.) See [http://www.fjc.gov/library/fjc_catalog.nsf] for the report.

[14] Participants in the pilot, selected from courts that volunteered, were U.S. District Courts for the Southern District of Indiana, District of Massachusetts, Eastern District of Michigan, Southern District of New York, Eastern District of Pennsylvania, and Western District of Washington and the U.S. Courts of Appeals for the Second and Ninth Circuits. Under the pilot, audio equipment, still cameras, or video cameras were admitted to the courtroom upon request and with approval from the panel hearing the case.

[15] Whether courts of appeals may allow electronic media coverage of both criminal and civil appeals appears to be somewhat open to interpretation. Criminal Rule 53 has been interpreted to legally preclude the televising of criminal direct appeals.

[16] Each circuit has its own judicial council, consisting of the chief judge of the circuit and an equal number of court of appeals and district judges from that circuit. The judicial council has authority to "make all necessary and appropriate orders for the effective and expeditious administration of justice within its circuit" (28 U.S.C. Section 332(d)(1)).

all open court proceedings, except criminal matters.[17] Similarly, the Ninth Circuit permits cameras in civil proceedings (including *habeas corpus* cases), but prohibits cameras on direct appeals of criminal cases.[18] The Second Circuit guidelines authorize the panel assigned to hear the oral argument to prohibit, at its sole discretion, camera coverage of any proceeding, and normally to use this authority upon the request of any panel member. In practice, the presiding judge makes the decision, but often confers with the other panel members in making the decision.[19] The Ninth Circuit guidelines provide that the presiding judge of the panel may limit or terminate coverage to protect the rights of the parties, or to ensure the orderly conduct of proceedings.

In the 1996 resolution, the conference also strongly urged (1) each circuit judicial council to adopt an order reflecting this decision with regard to appellate court proceedings; and (2) each circuit judicial council to adopt an order reflecting the September 1994 conference decision not to permit the taking of photographs, or radio and television coverage of court proceedings in district courts, and to abrogate any local rules of the court that conflicted with the decision.[20] Most judicial councils have either adopted resolutions prohibiting cameras in the district courts or acknowledged that there is already a prohibition in a given circuit's district courts.[21]

The Guide to Judiciary Policies and Procedures provides guidance on the policies promulgated by the Administrative Office of the U.S. Courts and approved by the Judicial Conference. The guide's policy on the use of cameras in the courtroom reflects the resolution and policies of the conference discussed above.[22]

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[17] The term "criminal matters," as defined in the guidelines, includes "not only direct appeals of criminal convictions, but also any appeal, motion, or petition challenging a ruling made in connection with a criminal case (such as bail motions or appeals from the dismissal of an indictment) and any appeal from a ruling concerning a post-conviction remedy (such as habeas corpus petition)." In addition, cameras are not permitted in criminal or civil *pro se* (representing oneself) matters. The Second Circuit's guidelines are available at [http://www.ca2.uscourts.gov/Docs%5CCOAManual%5CCameras.pdf].

[18] See [http://www.ca9.uscourts.gov] for the Ninth Circuit's guidelines. The Ninth Circuit Court of Appeals also provided, on Aug. 7, 2006, information regarding the exclusion of criminal proceedings.

[19] Based on information provided to the author by the Second Circuit Court of Appeals on Aug. 11, 2006.

[20] *Report of the Proceedings of the Judicial Conference of the United States, September 20, 1994*, pp. 46-47, and *Report of the Proceedings of the Judicial Conference of the United States, March 12,1996*, p.17. Information provided by the Administrative Office of the U.S. Courts.

[21] Written testimony of Judge Diarmuid F. O'Scannlain, of the U.S. Court of Appeals for the Ninth Circuit, on behalf of the Judicial Conference of the United States, Nov. 9, 2005, Senate hearing, p. 46.

[22] In 1972, the Judicial Conference had adopted a prohibition against "broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto" that applied to both civil and criminal trial proceedings in Canon 3A(7) of the Code of Conduct for United States Judges. In 1990, the canon was struck from the

(continued...)

The conference's position on televising court proceedings was reaffirmed on May 25, 2006. In letters to Senate Judiciary Committee Chairman Specter and certain other committee members, the Director of the Administrative Office of the U.S. Courts expressed the conference's strong opposition to pending legislation, S. 829, because it would allow the use of cameras in federal trial proceedings. Its opposition was based on concerns that broadcasting the court proceedings could have an intimidating effect on litigants, witnesses, and jurors. In addition, the conference stated its concern that some participants in the proceedings might grandstand, and that the prospect of televising could also be used as a negotiating tactic in pretrial settlement discussions (e.g., a party might choose not to exercise the right to go to trial because the trial would be televised). The conference maintained that S. 829 could impair the fundamental right of citizens to a fair trial, and also could undermine the safety of judges and trial participants. The conference further opposed the legislation because it would change the current practice of leaving the decision to be made by each court of appeals.

Legislation in the 109th Congress

In the 109th Congress, four bills (H.R. 2422, H.R. 4380, S. 829, and S. 1768) have been introduced related to television or other electronic media coverage of federal court proceedings. Another bill (H.R. 1751), as introduced, did not provide for electronic media coverage of judicial proceedings, but was later amended to do so. The five bills differ substantially regarding a number of issues, including which courts are covered (just the Supreme Court or district and appellate courts as well), the types of media that are included (just television or other types of media as well), and whether the electronic media coverage is simply authorized (thereby leaving it up to the individual courts to decide) or generally required. The five bills are similar, or identical, to legislation introduced in previous Congresses since at least the 105th Congress.[23]

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[22] (...continued)
code, and the policy on cameras in the courtroom was made a part of the *Guide to Judiciary Policies and Procedures* (vol. I, chap. 3, part E). Under the guide, a judge may authorize camera access to the courtroom during naturalization or other ceremonial proceedings. Cameras may also be used be for limited purposes such as presentation of evidence, or for security purposes (e.g., closed-circuit television).

[23] Rep. Steve Chabot has sponsored legislation similar to H.R. 2422 (and Section 22 of H.R. 1751) in every Congress since the 105th Congress, although H.R. 1280 (in the 105th Congress) did not include provisions to obscure the images, faces, and voices of witnesses and/or jurors, which were included in some of the later versions. Sen. Charles E. Grassley (with Sen. Charles E. Schumer) sponsored S. 829 (similar to H.R. 2422 and H.R. 1751). S. 829 is identical to other bills Sen. Grassley has sponsored in each of the past three Congresses (since the 106th Congress). Sen. Arlen Specter sponsored legislation, S. 1768, to require the televising of Supreme Court proceedings, which is identical to the bill he first introduced in the 106th Congress (S. 3086). (Over 25 years ago, in the 96th Congress, Rep. Frank J. Guarini, Jr., sponsored a resolution, H.Con.Res. 444, to express the sense of Congress that the Supreme Court should televise its oral arguments to broaden the public's access to them, but no action was taken on the resolution.)

House Bills

H.R. 2422. On May 18, 2005, Representative Steve Chabot, Chairman of the House Judiciary Committee's Subcommittee on the Constitution, introduced (for himself and Representative William D. Delahunt) a bill to allow electronic media coverage of federal court proceedings. The bill would allow the presiding judge of district and appellate courts of the United States to permit the photographing, electronic recording, broadcasting, or televising to the public of court proceedings over which that judge presides. The bill defines "appellate court of the United States" to mean any U.S. circuit court of appeals and the Supreme Court of the United States. The bill also would require, in district courts, obscuring the faces and voices of witnesses (other than a party to the case) upon their request, and would require that the presiding district judge inform each witness of his/her right to request that his/her image and voice be obscured during testimony. H.R. 2422 would authorize the Judicial Conference of the United States to promulgate advisory guidelines to which a presiding judge may refer in making decisions regarding the management and administration of photographing, recording, broadcasting, or televising proceedings. The authorization of electronic media in federal district courts (but not appellate courts) would sunset three years after the bill's enactment. H.R. 2422 was referred to the House Judiciary Committee, with a subsequent referral to the Subcommittee on Courts, the Internet, and Intellectual Property on July 1, 2005.

H.R. 1751. On April 21, 2005, Representative Louie Gohmert (for himself and Representative Anthony D. Weiner) introduced H.R. 1751, the "Secure Access to Justice and Court Protection Act of 2005." As introduced, the bill did not address the issue of electronic media coverage of court proceedings. On October 27, 2005, however, during House Judiciary Committee markup of H.R. 1751, committee members voted (20 -12) to adopt an amendment offered by Representative Chabot that was similar to H.R. 2422 to allow electronic media coverage of federal district and appellate court proceedings. H.R. 1751 has the same provision as H.R. 2422 and S. 829 (discussed below) that upon request, each witness (not a party to the case) would have his/her face and voice be obscured during testimony. H.R. 1751 would also extend to *jurors* the same right. In addition, the language in H.R. 1751 provides that the presiding district judge inform a juror of his/her right to request that his/her image be obscured during the proceeding. Some opposition was based on the belief that the amendment was not germane to H.R. 1751.[24] On November 9, 2005, the House passed H.R. 1751 (375-45), with the electronic media coverage provision as Section 22 of the bill. H.R. 1751 was received in the Senate on November 10, 2005, and was referred to the Senate Judiciary Committee.

H.R. 4380. On November 17, 2005, Representative Ted Poe introduced H.R. 4380, a bill to require that the Supreme Court permit television coverage of all open

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[24] For example, Rep. Louie Gohmert, sponsor of H.R. 1751, stated that he would have supported the amendment in some other setting, rather than as part of the court security bill. See U.S. Congress, House Committee on the Judiciary, *Secure Access to Justice and Court Protection Act of 2005*, report to accompany H.R. 1751, 109th Cong., 1st sess., H.Rept. 109-271 (Washington: GPO), p. 120.

sessions of the Court, unless the Court decided, by a vote of the majority of Justices, that allowing such coverage in a particular case would constitute a violation of the due process rights of one or more of the parties before the Court. Identical to S. 1768 (discussed below), H.R. 4380 was referred to the House Judiciary Committee, and subsequently, on February 6, 2006, referred to the Subcommittee on Courts, the Internet, and Intellectual Property. "All open sessions" would appear to include both oral arguments as well as the sessions at which the Court reads its opinions.

Senate Bills

S. 829. On April 18, 2005, Senator Charles E. Grassley (for himself and 10 cosponsors) introduced S. 829, the "Sunshine in the Courtroom Act of 2005." Similar to H.R. 2422 and Section 22 of H.R. 1751, the bill would authorize any presiding judge of any district or appellate court of the United States (including the Supreme Court) to permit the photographing, electronic recording, broadcasting, or televising of court proceedings over which that judge presides. The bill also would require, in district courts, obscuring the faces and voices of witnesses (other than a party to the case) upon their request, and would require that the presiding district judge inform each witness of his/her right to request that his/her image and voice be obscured during testimony. Like the House bills, S. 829 would authorize the Judicial Conference of the United States to promulgate advisory guidelines to which a presiding judge might refer in making decisions regarding the management and administration of photographing, recording, broadcasting, or televising proceedings. Also like the House bills, the authorization of electronic media in district courts would sunset three years after the bill's enactment.

S. 829 was referred to the Senate Judiciary Committee, and a hearing was held on the bill and S. 1768 (discussed below) on November 9, 2005. Among those who testified at the hearing were judges, scholars, and representatives for C-SPAN, Court TV, the National Association of Criminal Defense Lawyers, and the Radio-Television News Directors Association. Two judges who participated in the previously mentioned three-year pilot program also testified. In committee markup of S. 829 on March 30, 2006, Senator Jeff Sessions's amendment to exclude district courts from televising their proceedings was rejected by a vote of 9-7. On the same day, the committee reported S. 829 by a vote of 10-6. The bill was placed on the Senate Legislative Calendar.

S. 1768. On September 26, 2005, the Chairman of the Senate Judiciary Committee, Senator Arlen Specter (for himself and six cosponsors) introduced S. 1768. Identical to H.R. 4380, S. 1768 states that the Supreme Court "shall permit" televising all open sessions of the court, unless the court decides by a majority vote of Justices that such coverage in a particular case would violate the due process rights of one or more of the parties before the Court. S. 1768 was referred to the Senate Judiciary Committee. As noted above, the Senate Judiciary Committee held a hearing on both S. 1768 and S. 829 on November 9, 2005, and the committee reported both bills on March 30, 2006. The committee vote to report S. 1768 was 12-6, and the bill was placed on the Senate Legislative Calendar.

On April 18, 2006, the Congressional Budget Office (CBO) issued two separate cost estimates of S. 829[25] and S. 1768,[26] and determined enactment of legislation would have no significant impact on the federal budget.

In summary, three of the bills (H.R. 2422, H.R. 1751, and S. 829) would (if enacted) *authorize* the presiding judge to allow photographing, broadcasting, and televising of proceedings of *all* federal district and appellate courts, including the Supreme Court. The other two bills (H.R. 4380 and S. 1768) would *require* the televising of all open sessions of the Supreme Court *only*. Although courts of appeals now decide for themselves whether to allow electronic media coverage of all proceedings within their circuit, the three bills affecting those courts would change this dynamic by allowing the presiding judge to make that determination with regard to each case before an appellate panel. The House has passed one of the bills (H.R. 1751), and the Senate Judiciary Committee has reported two other bills (S. 829 and S. 1768). **Table 1** presents the main provisions of the five bills and their current status.

[25] For the cost estimate, see [http://www.cbo.gov/ftpdocs/71xx/doc7163/s829.pdf].

[26] For the cost estimate, see [http://www.cbo.gov/ftpdocs/71xx/doc7159/s1768.pdf].

Table 1. Comparison of Legislation in the 109th Congress to Televise Federal Court Proceedings

Provisions	H.R. 1751 (Section 22)	H.R. 2422	H.R. 4380	S. 829	S. 1768
Courts Covered	Federal District and Appellate Courts	Federal District and Appellate Courts	U.S. Supreme Court	Federal District and Appellate Courts	U.S. Supreme Court
Authorizes or Requires Coverage	Authorizes	Authorizes	Requires, unless majority of Justices object	Authorizes	Requires, unless majority of Justices object
Type of Media Coverage	Photographing, electronic recording, broadcasting, televising	Photographing, electronic recording, broadcasting, televising	Televising	Photographing, electronic recording, broadcasting, televising	Televising
Who Decides	Discretion of presiding judge	Discretion of presiding judge	Majority of Justices	Discretion of presiding judge	Majority of Justices
Safeguards to Obscure Identity of Witnesses/Jurors*	Yes (witnesses and jurors: faces and voices)	Yes (witnesses: faces and voices)	N/A	Yes (witnesses: faces and voices)	N/A
Judicial Conference Promulgates Guidelines	Yes	Yes	N/A	Yes	N/A
Sunset for District Courts	Three years	Three years	N/A	Three years	N/A
Legislative Action and Status	House passed (11/9/05) (vote: 375-45) Referred to the Senate (11/10/05) Pending in Senate Judiciary Committee	Pending in House Judiciary Committee, Subcommittee on Courts, the Internet, and Intellectual Property	Pending in House Judiciary Committee, Subcommittee on Courts, the Internet, and Intellectual Property	Senate Judiciary Committee Reported (3/30/06), (vote 10-6); Placed on Senate Legislative Calendar	Senate Judiciary Committee Reported 3/30/06, (vote 12-6); Placed on Senate Legislative Calendar

Note: N/A = not applicable.

*H.R. 1751, H.R. 2422, and S. 829 would require the presiding judge to inform each witness that he/she has the right to request that his/her image and voice be obscured during testimony. H.R. 1751 also requires that the presiding judge inform each juror of his/her right to request that his/her image and voice be obscured during trial proceedings.

Arguments for and Against Electronic Media Coverage

Whether to allow television and other electronic coverage of Supreme Court and other federal court proceedings is a debate that essentially balances the concerns about the adverse impact cameras could have in the courtroom with those about greater public access to judicial proceedings. Several issues are involved, including democratic values of government transparency, separation of powers, due process, integrity of court proceedings, security, and civic education. Although the following discussion separates the opponents from proponents, it should be noted that many believe there are legitimate arguments on both sides. In fact, some who have taken a position on one side of the issue recognize that the other side has valid reasons for taking the opposite view.

Opponents

Potential for Adverse Effects on Judicial Proceedings. The Supreme Court has noted that pretrial publicity can cause "tensions [to] develop between the right of the accused to trial by an impartial jury and the rights guaranteed others by the First Amendment." *Nebraska Press Association v. Stuart*, 427 U.S. 539, 551 (1976). This suggests the possibility that excessive publicity could give rise to due process problems in particular situations, and to permit cameras in a courtroom during trial would arguably cause excessive publicity in some cases.

The Judicial Conference of the United States has opposed televising federal court proceedings due to concerns that the fundamental right of citizens to a fair trial might be impaired, and because of the intimidating effect it might have on litigants, witnesses, and jurors in both civil and criminal trial proceedings. Moreover, the conference has expressed opposition to changing the status quo of each court of appeals making the decision for itself on whether to allow electronic media coverage of its proceedings.

U.S. District Court Judge Jan DuBois (for the Eastern District of Pennsylvania), who had participated in the pilot program, said, "The paramount responsibility of a district judge is to uphold the Constitution, which guarantees citizens the right to a fair and impartial trial. In my opinion, cameras in the district court could seriously jeopardize that right because of their impact on parties, witnesses and jurors."[27] He believed that the disadvantages of cameras in the courtroom far outweighed the advantages, and that television cameras were likely to have a negative impact on the substance of the proceeding.

At the April 4, 2006, House hearing on the Supreme Court's budget request for FY2007, Justice Clarence Thomas was asked his views on televising the Court's proceedings. Justice Thomas expressed concerns that doing so would risk undermining the manner in which the court considers cases. He noted that while some Justices felt more strongly than others, the "general consensus" was "not one

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[27] Nov. 9, 2005, Senate hearing, p. 14.

of glee."[28] The integrity of court proceedings, in some opponents' estimation, would be jeopardized if cameras gained access to the courtroom. Justice Antonin Scalia said in October 2005, "We don't want to become entertainment. I think there's something sick about making entertainment out of real people's legal problems. I don't like it in the lower courts, and I particularly don't like it in the Supreme Court."[29]

During the Senate Judiciary Committee markup of S. 829 and S. 1768 on March 30, 2006, several Senators expressed strong reservations about or opposition to televising court proceedings. Expressing concerns about "grandstanding," Senator Orrin Hatch said, "Judges are not politicians — they should not be making speeches from the bench." Senator Jeff Sessions said that political pressure should not be placed on the courts, and that there was "strong opposition" to cameras in courts from judges, prosecutors, and defense lawyers. Senator Tom Coburn noted concern that televising proceedings would focus on the performance of lawyers, not the defendants, and said that "it will ruin the third branch of government."

In relation to the intimidating effect cameras could have on litigants, witnesses, and jurors, Senator Sessions expressed the need for caution as the televising issue was considered. He said

> The Supreme Court obviously has begun to loosen up some. They have allowed their arguments to be taped and produced, but they likewise have given this consideration quite a number of times and have concluded that they do not wish their lawyers and the process to be a television show, and they would prefer it to be focused on the law of the case...that in the evaluation of it, I think the least detrimental would be the Supreme Court. The next least detrimental consequences perhaps would be the courts of appeals, and the most detrimental from my perspective would be the trial courts.[30]

Judge Edward R. Becker, former chief judge of the U.S. Court of Appeals for the Third Circuit, expressed concern that judges might alter their mode of questioning which, in turn, could change the argument process. Joel Hirschhorn, a seasoned criminal defense attorney, maintained that people posture before cameras, and that televising the Supreme Court proceedings would "trivialize," and even

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[28] In the 109th Congress, the House did not hold hearings specifically on the issue of televising federal court proceedings. However, the matter was raised at the Apr. 4, 2006, House subcommittee hearing on the Court's FY2007 budget request. Testifying before the House Appropriations Subcommittee on Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies were Justices Anthony Kennedy and Clarence Thomas. Chairman Joe Knollenberg, ranking member John W. Olver, and other subcommittee members asked the Justices for their views on televising Supreme Court proceedings.

[29] "Scalia opposes cameras in Supreme Court," *Associated Press*, Oct. 10, 2005, available at [http://www.msnbc.msn.com/id/9634936].

[30] Nov. 9, 2005, Senate hearing, p. 10.

"erode respect for the system."[31] House Minority Whip Steny Hoyer also reportedly said he was opposed to public televising of such court proceedings because it would change the character of the proceedings.[32]

The Bush Administration has also expressed opposition to electronic media coverage of federal court proceedings. In its November 9, 2005, *Statement of Administration Policy on H.R. 1751*, the Administration stated that while it "understands the public interest in viewing trials, the Administration believes Section 22 has the potential to influence court proceedings unduly and to compromise the security of participants in the judicial process. The Administration looks forward to continuing to work with Congress to address constitutional issues raised by certain provisions of this bill and to enhance judicial security through this bill and other measures."[33]

Separation of Powers Concerns. Particularly with regard to legislation mandating coverage of the Supreme Court, some believe the decision as to whether the Court's proceedings should be televised should be a decision for the Court to make — not one that Congress should legislate. Justices Anthony Kennedy and Clarence Thomas have both expressed concerns about the possible effect of such a mandate on the separation of powers. For example, Justice Kennedy said, "It is not for the court to tell Congress how to conduct its proceedings....We feel very strongly that we have intimate knowledge of the dynamics and the mood of the court, and we think that proposals mandating and directing television in our court are inconsistent with the deference and etiquette that should apply between the branches."[34]

Potential for Misinterpretation. Some believe that televising oral arguments, or a portion of the proceedings, could lead to misinterpretation of the way the courts operate. Justice Kennedy and others have said that oral arguments do not give the complete picture of the Supreme Court's work, and constitute only a small portion of its decision-making process. The Justices do most of their work in solitude — reading, writing, considering voluminous documents — before deliberating with the other Justices in conference. Justice Scalia expressed similar concerns that even if proceedings were televised gavel-to-gavel, the vast majority of the public would not see the entire proceedings, and sound bites would misinform, rather than inform, the public. During a February 16, 2001, interview, the late Chief Justice William H. Rehnquist reportedly said the following:

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[31] On Nov. 30, 2000, Judge Becker, Mr. Hirschhorn, and others discussed the Supreme Court's decision not to allow television coverage of the oral argument in *Bush v. Gore*. See [http://www.pbs.org/newshour/bb/media/july-dec00/cameras_11-30.html] for the discussion.

[32] Elysha Tenenbaum, "House Appropriators Query Kennedy, Thomas on Cameras," *Roll Call*, Apr. 5, 2006, p. 3.

[33] See [http://www.whitehouse.gov/omb/legislative/sap/109-1/hr1751sap-h.pdf] for the full text of the Administration's statement on H.R. 1751, which the House passed on Nov. 9, 2005.

[34] Linda Greenhouse, "2 Justices Indicate Supreme Court Is Unlikely to Televise Sessions," *New York Times*, Apr. 5, 2006, p. A16.

> I think that, in the first place, we are not interested in becoming media personalities. We kind of value what anonymity we have. And secondly, the extent to which any televised proceedings would be shown is obviously not going to convey the whole depth of the proceeding...an exchange between a justice and a lawyer simply doesn't convey that idea at all. And I think also in some jurisdictions where they have tried televising, there's a feeling that it affects the way at least the lawyers behave. And I suspect it may affect the way judges behave too.[35]

Former Chief Judge Becker also believed that televising proceedings could mislead the viewer, who might not fully understand the dynamics of the oral argument process. He explained, "The oral argument process is very intense, rigorous. It's rough. Judges play devil's advocate. Sometimes you deride a counsel's argument so as to bring him or her out and to test the argument. You do it to both sides."

Security and Privacy Concerns. At the April 2006 House subcommittee budget hearing, Justice Thomas maintained that televising the Court's proceedings could result in the Justices losing a degree of the anonymity that they now have, and that the loss could raise security issues.[36] These concerns arose in the context of larger security concerns about court security. Some maintain that security is a serious concern for judges, prosecutors, witnesses, jurors, and court staff involved in both civil and criminal trial courts, as evidenced by recent violent attacks on judges and court personnel. Several high-profile shootings and murders of judges, court personnel, and their families — just since the beginning of 2005 — underscored the gravity of the security issue. Death threats made against Justices, and other judges, have continued to generate great concern.[37]

The Judicial Conference opposed S. 829 in part because of concerns that court security could be undermined. The conference said it believed that broadcasts showing images of judges and court employees would make them more vulnerable as targets because they could be more easily identified, and could result in increased threats against judges, lawyers, and other participants in the courtroom (including law enforcement officers and personnel, such as U.S. Marshals, U.S. attorneys, and court security officers). Private information could be revealed about witnesses, which might serve to intimidate or discredit them, and perhaps hinder their willingness to testify. There is concern that camera coverage of private matters, including those of

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[35] Tony Mauro, "Rehnquist Drops Hints on Retirement Thinking," Apr. 5, 2001, available at [http://www.law.com/jsp/newswire_article.jsp?id=1015973986312].

[36] Linda Greenhouse, "2 Justices Indicate Supreme Court Is Unlikely to Televise Sessions," *New York Times*, Apr. 5, 2006, p. A16.

[37] Bill Mears, "Justice Ginsburg details death threat," *CNN*, Mar. 15, 2006, available at [http://www.cnn.com/2006/LAW/03/15/scotus.threat/index.html]. See also Amanda Paulson and Patrik Jonsson, "How judges cope with everyday threats on the job," *Christian Science Monitor*, Mar. 4, 2005, p. 1. For more information on judicial security, see CRS Report RL33464, *Judicial Security: Responsibilities and Current Issues*, by Lorraine H. Tong.

an embarrassing nature, could be not only broadcast widely, but also duplicated and replayed.[38]

Proponents

Access to Judicial Proceedings. In *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 580 (1980), the Supreme Court held "that the right to attend criminal trials is implicit in the guarantees of the First Amendment," and implied, without deciding, that the same was true of civil trials. The Court also noted "[t]he nexus between openness, fairness, and the perception of fairness," thereby suggesting that openness furthers not only free speech rights, but criminal defendants' and other parties' right to due process. *Id*. at 570.

Some proponents of television and other electronic media coverage of federal court proceedings believe that the constitutional right to a fair trial (including appeals) means that all court proceedings should be open and made public, and that a free press should have the ability to gather and disseminate information to the public through the medium of television, which, for almost everyone, is the closest thing to actually being in the courtroom. Some also contend that open proceedings lead to fair trials, and further strengthen a democratic society. Among those who raised First Amendment and other constitutional rights in support of televising court proceedings were Senator Grassley (sponsor of S. 829 and cosponsor of S. 1768), attorneys, and scholars at the November 2005 Senate hearing.[39] Senator Grassley said the following:

> ...we often talk about the intentions of the Founding Fathers. I think allowing cameras in the Federal courtroom is absolutely consistent with their intent that trials be held in front of as many people as choose to attend. I believe the First Amendment requires court proceedings to be open to the public and, by extension, news media....As the Supreme Court articulated in 1947, in *Craig v. Harney*, quote, "A trial is a public event." Another quote: "What transpires in the courtroom is public property...." Beyond the First Amendment implications, enactment of our bill would assist in the implementation of the Sixth Amendment's guarantee of public trials in criminal cases.[40]

Transparency and Open Government. The principle of government transparency was highlighted during the Senate hearing on S. 829 and S. 1768 by several proponents of televising federal court proceedings, including sponsors of the legislation, C-SPAN, and Court TV. Many advocates, including Senate Judiciary Chairman Specter (sponsor of S. 1768 and cosponsor of S. 829) and Senator Grassley, have quoted former Justice Louis Brandeis's dictum that "sunshine is the best disinfectant." Senator Specter expressed his belief that the federal court televising issue is of enormous importance to the American people on the basics of understanding how the government functions. In his opinion, Congress has the

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[38] Based on the conference's May 25, 2006, letter to certain Senate Judiciary Committee members.

[39] Nov. 9, 2005, Senate hearing, p. 1.

[40] Ibid., p. 3.

legislative prerogative to make the determination on televising the Supreme Court, but he added, "Obviously, if the Supreme Court decides as a matter of separation of powers that it is not a Congressional prerogative, we will not petition for a hearing. That will be the judicial decision which we respect since *Marbury v. Madison*."[41]

Many proponents believe that televising Supreme Court and other federal court proceedings would represent a natural progression from audiotaping to provide more public access, resulting in greater transparency of court operations, and government in general. Some further assert that the federal courts should be held to the same standard as Congress, which has its sessions televised gavel-to-gavel (the House since 1979, and the Senate since 1986). Senator Patrick J. Leahy (cosponsor of both S. 1768 and S. 829) also said court proceedings should be open to the public.[42]

Speaking to advance his amendment to H.R. 1751, Representative Steve Chabot, chairman of the House Judiciary Subcommittee on the Constitution, noted the following during committee markup of the bill:

> The chambers of Congress are open to all citizens through the C-SPAN, as I mentioned before, allowing the American people to stay apprised of the actions of the Legislative Branch of Government. Why should the Judicial Branch be any different? Lifetime tenure for unelected officials conveys a tremendous amount of power. When the Supreme Court is in session, you can walk by and see hundreds of people waiting for their opportunity to observe the judicial process. Why should our constituents not be allowed to observe this process, and why should people be forced to rely on the news media to interpret and filter the proceedings when cameras would allow citizens to watch for themselves?...Passage of this amendment would send a strong signal to the Chief Justice, I believe that coverage of the Supreme Court proceedings is long overdue.[43]

In remarks during introduction of his bill, H.R. 4380, to require the televising of Supreme Court proceedings, Representative Ted Poe, one of the first Texas state judges to allow cameras in the courtroom, said, "the more open and public a trial, the more likely justice will occur. I found that cameras only enhance this concept." Of Supreme Court proceedings, because of the magnitude of its rulings, he said,"these proceedings above all others should be as open to the public as possible." He further noted that Iraq is televising its trials, including the trial of Saddam Hussein.[44]

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[41] Ibid., p. 2. *Marbury v. Madison* was an 1803 landmark case that established the doctrine of judicial review. In this case, the Supreme Court, for the first time, struck down an act of Congress as unconstitutional, and established an important precedent for the Court's power to determine the constitutionality of actions by the other two branches of government, and its role as the chief interpreter of the Constitution.

[42] Ibid., p. 7.

[43] U.S. Congress, House Committee on the Judiciary, *Secure Access to Justice and Court Protection Act of 2005*, report to accompany H.R. 1751, 109th Cong., 1st sess., H.Rept. 109-271 (Washington: GPO), p. 113.

[44] Rep. Ted Poe, "Film Supreme Court Proceedings," remarks in the House, *Congressional Record*, daily edition, vol. 151 (Dec. 17, 2005), p. H12149.

Educational Value. Proponents — including Members of Congress such as Senators John Cornyn (cosponsor of both S. 829 and S. 1768)[45] and Russell D. Feingold (cosponsor of S. 829 and S. 1768),[46] C-SPAN, Court TV, and certain scholars — also maintain that important civic lessons can be learned from watching the proceedings, giving the public insight into how the federal courts work. Brian P. Lamb, founder and chairman of C-SPAN, and Professor Peter Irons[47] also highlighted the civic educational value of public access to court proceedings and, in particular, the Supreme Court's proceedings. Mr. Lamb, a more than 20-year advocate of televising the Supreme Court's proceedings, indicated that C-SPAN would televise all of the Court's oral arguments on a gavel-to-gavel basis, without any interruptions, commentary, or analysis.[48]

Privacy and Security Safeguards. Advocates of televising court proceedings, including sponsors of legislation, maintain that there would be sufficient safeguards in the proposed bills to obscure the images and voices of witnesses and jurors to provide privacy and security. In addition, proponents say that the discretionary authority would allow presiding judges to exercise their judgment as to whether or not televising would harm the proceedings or the participants in a particular case. These proponents, including Senator Charles E. Schumer (cosponsor of both S. 829 and S. 1768), have noted that many states have allowed cameras into the courtroom, and they have not been disruptive to the proceedings.[49] All 50 states permit some form of video or audiotaping of court proceedings. Advocates, including C-SPAN, Court TV, and RTNDA, also heralded the televising successes of state courts and believe it can be duplicated in the federal courts.[50]

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[45] Nov. 9, 2005, Senate hearing, p. 78.

[46] Ibid., p. 88.

[47] Ibid., p. 21. Peter Irons, Professor of Political Science, Emeritus, University of California at San Diego, was the person who had copied and released to the public, in 1993, audiotapes of Supreme Court oral arguments in 23 historic cases, including *Roe v. Wade*, the Pentagon Papers case, and the Watergate Tapes case, that were stored at the National Archives.

[48] Ibid., pp. 99-100. In 1988, C-SPAN unsuccessfully approached then-Chief Justice William H. Rehnquist to televise the Court's proceedings, and subsequently, on Oct. 3, 2005, Mr. Lamb reiterated the offer to Chief Justice John Roberts.

[49] Ibid., p. 5.

[50] Although a majority of states permit cameras in the court, their authorizing statutes stipulate limitations of some kind. For example, 13 states do not permit coverage of criminal trials, and nine allow cameras only in appellate courts. Nineteen states, through legislation, provide the presiding judge with broad discretion to allow or disallow broadcasts. The courts have already permitted limited closed-circuit televising. In a few federal cases, such as the Oklahoma City bombing trial and in the recent *United States v. Moussaoui* case, closed-circuit televising for viewing by families of the victims has been permitted.

Concluding Observations

The debate on televison and other electronic media coverage of Supreme Court and other federal court proceedings continues. The issue is far from being resolved given, on the one hand, the strong advocacy of the sponsors of the legislation and the media, and, on the other hand, the opposition and reservations expressed by some Supreme Court Justices and others.

With respect to legislation concerning television or other electronic media coverage of federal court proceedings, Congress could consider a range of options. For example, the legislation could:

- address coverage of only the Supreme Court, only other appellate courts, only federal district courts, or some combination of these courts.

- include only civil cases, only criminal cases, or both civil and criminal cases.

- either authorize or require such coverage, or vary depending on the type of court. For example, such coverage could be encouraged for Supreme Court proceedings, but mandated for all other federal courts.

- where electronic media coverage is not required, allow the presiding judge (e.g., the Chief Justice of the Supreme Court) to decide whether to allow such coverage, permit a majority of judges on a court to decide, or allow a single judge on an appellate court to bar such coverage.

- provide for only television coverage of federal court proceedings, or allow (or require) other types of electronic media coverage (e.g., photographing, audiotaping, or a combination of such options). Other options, such as "live" coverage or delayed broadcasting for release the next day or at some future pre-determined date, might also be considered.

- mandate that electronic media coverage of federal court proceedings require obscuring the images, faces, and/or voices of *all* litigants, witnesses, and jurors (when requested) to protect their identities, or only some of these persons (e.g., only witnesses). Another option to provide a measure of security and privacy could be to prohibit televising close-ups of judges, attorneys, court personnel, and law enforcement officers (including U.S. Marshals and court security officers) at all proceedings.

- make television or other electronic media coverage permanent or limit the coverage to a specific time period or number of sessions per year. For example, a pilot program for the Supreme Court could

provide for "live" audiotaping of a set number of proceedings, or televising three oral arguments during a Court term for release at the end of the term. Both types of broadcast could be followed by an assessment of the experiences.

- include provisions for the establishment of guidelines for the management and administration of electronic media coverage of federal court proceedings. For example, the Judicial Conference of the United States could be required to promulgate guidelines based on recommendations by its committees (e.g., the Committee on Court Administration and Case Management). Other options for formulating the guidelines could include input from the Federal Judicial Center and the judicial council of each circuit. Guidelines could also be modeled after those already established by the Second and Ninth Circuit Courts of Appeals. The guidelines could be advisory or mandatory for all courts, or could leave the decision to each circuit.

Potential Costs and Implementation Issues

The Congressional Budget Office concluded that S. 829 and S. 1768 would not have a significant impact on the federal budget. Nevertheless, implementation of legislation requiring television or other electronic media coverage of federal court proceedings is likely to have some associated costs, with those costs varying according to the nature and scope of the legislation (e.g., whether the requirements apply to only the Supreme Court or to all federal courts). It is unclear whether the courts would be expected to absorb those costs or whether they would be borne by the media. Also unclear are various related implementation issues, including whether the courts or the media would provide and control the equipment and personnel needed to provide the prescribed coverage. If the courts provided these resources, would they provide a pool feed to all media, or only selected media (e.g., C-SPAN or Court TV)? If the media provided these resources, how would they be selected, and what authority would the courts have to control camera movement or to enforce any prohibitions regarding security policies and procedures? These and other issues would have to be resolved before television or other electronic media coverage could begin.

Other Potential Approaches

To the extent that further information and reflection are needed regarding the impact that television or other electronic media coverage could have on federal court proceedings, various options are available. For example, Congress could establish a bipartisan commission to examine the potential impact of televising federal court proceedings. The commission could comprise members from both the judicial and legislative branches, and could seek the views of the media, public citizens' groups, and scholars, as well as retired judges and former Members of Congress.

Likewise, to address concerns that television coverage could lead to a misinterpretation of the way the courts operate, efforts could be made to educate the

public regarding the judiciary and its proceedings. One possibility could be a televised event, such as "A Day in the Life of the Supreme Court," that could involve Supreme Court Justices explaining how they decide which cases will be heard; how oral arguments are conducted (possibly including a re-enactment or simulation); and what path cases take in the two to three months following the oral arguments as the Court's work progresses until decisions are made and opinions are written, then publicly read. Such a contextual approach, in the Justices' own words, to characterize the work of the Supreme Court, could provide an educational experience for the public.

Congress and the Supreme Court have expressed desire to strengthen relations between the legislative and judicial branches — as evidenced by statements of Members of Congress and the Chief Justice, as well as efforts made by both Members and Justices to meet more frequently to discuss issues of mutual concern.[51] Such discussions could further mutual understanding and perhaps lead to some common ground for addressing the concerns of both Members and Justices about televising the proceedings of the nation's highest court.

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[51] For example, Sen. Specter has been scheduling lunch with the Justices to discuss issues of mutual interest (see Alexander Bolton, "Specter to the justices: I'm hungry, let's do lunch," *The Hill*, June 21, 2006, p. 1). The nine Justices also hosted a lunch for congressional leaders in June 2005, providing a rare opportunity to get together. On Dec. 8, 2003, Rep. Adam Schiff and Rep. Judy Biggert formed the bipartisan Congressional Caucus on the Judicial Branch to forge a closer working relationship with the judicial branch and to work with it on issues that directly affect the judiciary. On May 11, 2006, the caucus hosted a meeting with Chief Justice Roberts, and in July 2006, Justice Ruth Bader Ginsburg became the fifth guest at a series of meetings with the Justices. See [http://schiff.house.gov/judicialcaucus] for more information about the caucus.